



BAR BULLETIN

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NOTICES

N.M. SUPREME COURT Disciplinary Board

*In the Matter of Thomas A. Rutledge and I. William Quickel Attorneys Licensed to Practice Before the Courts of the State of New Mexico.
Disciplinary Nos. 09-97-333 and 09-97-334 (Consolidated)*

FORMAL REPRIMAND

This matter arose out of methods utilized by you to disqualify the Special Master in a Children's Court proceeding, after the Special Master had announced his decision that the State of New Mexico had not carried its burden of showing beyond a reasonable doubt that the juvenile in question had committed the offense with which he was charged and had recommended that the juvenile be found not guilty of that

offense. The hearing committee and a panel of this Board have determined that your actions were violative of several of the Rules of Professional Conduct.

At all times pertinent to this incident, Mr. Rutledge was the elected District Attorney in the Fifth Judicial District, and Mr. Quickel was Mr. Rutledge's subordinate and subject to his control and supervision in the discharge of his prosecutorial duties. Both of you are experienced attorneys.

In October 1996 an incident occurred at a Hobbs High School football game, which led to the arrest of several members of the black community. Among those arrested was a juvenile named Michael Hodge, who was charged with Resisting Arrest, Eluding, or Obstructing an Officer. Shortly thereafter, Hodge filed a tort claims notice alleging that his civil rights had been violated by the Hobbs Police Department. There was significant media interest in the case and, in addition, an investigation into the alleged civil rights violations of Hodge and the others arrested was launched by the U.S. Department of Justice and the Federal Bureau of Investigation.

Hodge's case was assigned to Special Master M.J. Collopy on February 14, 1997. It is the local custom in Lea County that concurrence to the assignment of a Special Master to a case required by NMRA 10-111(C) is presumed if no party raises a timely objection to the appointment. NMRA 10-111(G) permits parties to request the Children's Court to "remove the special master from acting in that proceeding" at any

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Get your ideas on the list!

The State Bar's Annual Convention Planning Committee needs your ideas for:
Keynote Speakers & CLE Speakers
for this year's convention in Santa Fe (Oct. 21-23)
Fax suggestions to Cheryl Bruce, 828-3765
Or send an e-mail to cbruce@nmba.org

We need your ideas!
(and your "connections")

time for good cause shown. Between February 1997 until the conclusion of the Hodge trial in June 1997, no objection was made to the appointment of Special Master Collopy nor was there any request for his removal from the proceeding. Additionally, Mr. Collopy had served as a Special Master in Lea County since 1981 and, during that sixteen (16) year period, attorneys for the State of New Mexico had never once questioned his ability to be fair and impartial, even in cases where the credibility of Hobbs police officers was an issue.

A full evidentiary hearing was conducted in the Hodge case on June 2, 1997. At the conclusion of the hearing, Special Master Collopy found that the State of New Mexico had not met its burden of proving the crime alleged against Hodge beyond a reasonable doubt and announced that he would recommend a dismissal of the charges. He also noted in his decision, in response to an argument by Hodge's attorney, that although Hodge's civil rights "may well have been violated... that is not for this court to determine."

This latter comment was related to Hobbs Police Chief Tony Knott by a news reporter who had attended the hearing. Chief Knott became annoyed at the comment and contacted your office to complain that his officers "did not get a fair shake" at the hearing. He requested you to find a way to obtain a new hearing or other judicial relief that would set aside the findings of the Special Master.

The "police blotter" in Lea County is a public document open to general

inspection. All "contacts" between police officers and members of the public - be they suspects, alleged offenders, victims, or witnesses - are subject to being recorded in the blotter, whether or not a crime or infraction is ever charged as the result of the "contact." The names of various relatives of the Special Master had appeared in the blotter over a period of fourteen (14) years. Chief Knott surmised that because of these "contacts," which he presumed to have been "negative," the Special Master must necessarily be prejudiced against his department and/or biased with regard to his officers' testimony and that it was this suspected bias which had led to the acquittal of Hodge.

Based upon this information, the two of you conferred and determined that an "Exception" to the report of the special master could be filed pursuant to Children's Court Procedural Rule 10-111(E), NMRA. Rule 10-111(E) provides a mechanism whereby an aggrieved party may request the children's court judge to review the proposed findings, conclusions, recommendations, or proposed orders of the Special Master by pointing out the item(s) to which exception is taken, making appropriate references to the record of proceedings, citing any authority in support of the party's position, and including a statement of the relief sought.

The "Exception" which you filed presented no legal issues for review but instead attacked the impartiality of the Special Master by misquoting his remarks about a possible civil rights violation and focusing upon the contacts between the Hobbs Police Department

and a juvenile member of the Special Master's family as contained in the "police blotter," which you alleged created an appearance of impropriety sufficient to have required the Special Master to have recused himself. (While the police records indicate that the family member had "32 Criminal Reports," a careful inspection of the records reveals that the family member was listed as the "offender" on only three occasions, as a "suspect" on six occasions, as a "witness" on seven occasions, and as the "victim" on sixteen occasions.) Although Mr. Quickel drafted this document, Mr. Rutledge specifically authorized its filing.

The hearing committee and a panel of the Disciplinary Board have agreed that your conduct was violative of several of the Rules of Professional Conduct.

Rule 10-111 NMRA provides the means by which a party to a proceeding in children's court can seek review by the District Judge of a Special Master's findings and recommendations, if a party believes the findings and recommendations are incorrect and either not supported by substantial evidence or contain errors of law. There is, however, no support in Rule 10-111 for the removal of a Special Master after a matter has been submitted for adjudication and where one simply does not agree with the outcome. The "Exception" filed by you had no sound basis in law. Furthermore, it could not have been predicated upon any reasonable belief that the Special Master had exhibited bias or prejudice against either the State of New Mexico or officers of the Hobbs Police Department. There was no evidence which, when judged by the standard of what a reasonable person would find objectionable, created any appearance of impropriety that would prevent M.J. Collopy from serving as Special Master in a matter in which Hobbs police officers would testify. In that there was no good faith for the filing of your "Exception," it was frivolous and in violation of Rule 16-301 of the Rules of Professional Conduct.

It is apparent from the record in this case that Chief of Police Tony Knott

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Professionalism Tips from the State Bar

With respect to my clients:

I will be loyal and committed to my client's cause, but I will not permit that loyalty and commitment to interfere with my ability to provide my client with objective and independent advice.

A LAWYER'S CREED OF PROFESSIONALISM

was dissatisfied with the outcome of the Hodge case and possibly even concerned about its effect upon pending civil rights litigation and the Department of Justice investigation into his department. You argued in this case that your duty to zealously represent a client required you to take the action that you did. In the future, you must bear in mind that neither Chief Knott nor the Hobbs Police Department is your client, and you were under no duty to act as you did merely because Chief Knott encouraged you to do so.

Standard 3-1.2(c) of the *ABA Standards of Criminal Justice* (The Function of the Prosecutor) notes that "the duty of the prosecutor is to seek justice, not merely to convict." While the prosecutor also has an obligation to provide legal advice to police regarding their functions and duties in criminal matters (Standard 3-2.7[a]), the Commentary to this rule directs that "[p]rosecutors should, however, take care to avoid any relationship with police which might cast doubt upon the independence and integrity of the office of the prosecutor."

It was also determined that your "Exception," since it had no justification in law or fact, served no substantial purpose apart from embarrassing or burdening third persons in violation of Rule 16-404 of the Rules Governing Discipline. There was ample evidence in the record that your action caused an adverse impact upon Mr. Collopy and his family. Although the hearing committee did not feel that the "third party" language of Rule 16-404 would encompass a judicial officer or his family, the Board panel saw nothing in the rule or its commentary which would exclude such non-parties to the case.

In addition, Mr. Rutledge, you violated Rule 16-501(B)(1) of the Rules of Professional Conduct by your ratification of Mr. Quickel's conduct. While Mr. Quickel is not exonerated because of his reliance upon your advice, your failure to adequately supervise him in this matter was unfortunate. See *Matter of Hawes*, 940 P.2d 159 (N.M. 1997).

Finally, by your use of improper means in an effort to influence the out-

come of a trial, you both violated Rule 16-804(D). While your actions were arguably not intended to be malicious, your conduct in this instance was prejudicial to the administration of justice.

Prosecutors, since they represent all of the people, bear a heavy responsibility to conduct themselves in a manner which fosters confidence in our legal system. This reprimand will hopefully remind you and your fellow prosecutors that a bending of procedural and ethical rules in an effort to achieve a conviction will not be condoned.

This Formal Reprimand will be filed with the Supreme Court in accordance with Rule 17-206(D) NMRA 1998 and will remain as a part of your permanent records with the Disciplinary Board, where it may be revealed upon inquiry to the Board concerning any discipline ever imposed against you. In addition, the text of this reprimand will be published in the State Bar of New Mexico *Bar Bulletin*.

The costs of this action in the amount of \$3044.15 have already been paid by you.

RICHARD L. GERDING
Chairman

Study on Racial and Ethnic Fairness and Equality in the Courts

The Supreme Court of New Mexico, has released the Final Report of the Supreme Court Committee to Study Racial and Ethnic Fairness and Equality in the courts, including its findings and recommendations for continuous quality improvement.

For copies of the report, call Lisa Lightman, Project Director at 827-4624.

Note: The State Bar will publish the Executive Summary of the Final Report in the next *Bar Journal*.

Proposed New Rule of Professional Conduct

The Supreme Court is considering the following to adopt a new Rule 16-117 of the Rules of Professional Conduct. Send written comments by March 19 to:

Kathleen J. Gibson, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848

For your reference: The full text of the proposed revision was published in the Feb. 25 (Vol. 38, No. 8, p. 20) *Bar Bulletin*.

Proposed Revision of the Criminal and Civil Forms for the Courts of Limited Jurisdiction

The Supreme Court is considering the approval of Criminal Form 9-312 and Civil Form 4-810. Send written comments by March 19 to:

Kathleen J. Gibson, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848

For your reference: The full text of the proposed revision was published in the Feb. 25 (Vol. 38, No. 8, pp. 21-22) *Bar Bulletin*.

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COMING UP!

MARCH 16

Solo & Small Firm Practitioners Section — Monthly Luncheon, noon, Albuquerque Petroleum Club

MARCH 19

Family Law Section — Board of Directors, 3 p.m., State Bar Center

MARCH 22

Legal Services and Programs Planning Subcommittee, 1:30 p.m., State Bar Center

MARCH 27

Young Lawyers Division — Board of Directors, 10 a.m., Farmington

MARCH 29

Children's Law Section — Board of Directors, noon, Children's Court

APRIL 8

Technology Utilization Committee, 3 p.m., State Bar Center

Changes or cancellations may occur.